

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Israel Garcia,

Plaintiff,

v.

Antonio Nuno, et al,

Defendant.

Case No.: 14cv00243-BAS-BGS

**ORDER DENYING PLAINTIFF'S EX
PARTE MOTION FOR
APPOINTMENT OF COUNSEL**

I. BACKGROUND

On July 5, 2016, Plaintiff Israel Garcia, a prisoner proceeding *pro se* and In Forma Pauperis ("IFP") in this civil rights action, filed a motion to appoint counsel, his second such request. (ECF No. 45.) In his Amended Complaint, Plaintiff claims several correctional and medical officials at Calipatria State Prison violated his Eighth Amendment and Fourteenth Amendment rights in February 2013, by failing to ensure his safety, using excessive force against him, denying him adequate medical treatment, and refusing to permit him to present evidence at a disciplinary proceeding which resulted in a year of administrative segregation. (*See* ECF No. 16 at 5-17.) On July 18, 2014, Plaintiff filed an ex parte motion to appoint counsel because he is indigent, incarcerated, has limited access to the law library, has made "repeated efforts to obtain a lawyer," believes his case will "likely involve conflicting testimony," and that counsel would

1 “better enable [him] to present evidence and cross examine witnesses.” (*See* ECF No. 12
 2 at ¶¶ 1-4.) On October 31, 2014, the Court issued an order denying Plaintiff’s motion to
 3 appoint counsel without prejudice for failure to demonstrate the exceptional
 4 circumstances required for appointment of counsel in a civil action. (*See* ECF No. 18 at
 5 3.)

6 Presently before the Court is Plaintiff’s second ex parte motion for appointment of
 7 counsel filed on July 5, 2016 *nunc pro tunc* to June 30, 2016. (ECF No. 45.) Plaintiff’s
 8 present motion requests appointment of counsel because of his “recent diagnosis” and
 9 because his “resources [in jail] are very limited.” (*Id.* at 1.)

10 **II. STANDARD OF REVIEW**

11 As explained in the Court’s prior order, “there is no absolute right to counsel in
 12 civil proceedings.” *Hedges v. Resolution Trust Corp. (In Re Hedges)*, 32 F.3d 1360,
 13 1363 (9th Cir. 1994). Consequently, federal courts do not have the authority “to make
 14 coercive appointments of counsel” as Plaintiff has asked this Court to do in his recent
 15 motion. *Mallard v. United States District Court*, 490 U.S. 296, 310 (1989); *see also*
 16 *United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995).
 17 The Court also explained in its October 31, 2014 Order that while district courts do have
 18 discretion under 28 U.S.C. § 1915(e)(1), to “request” that an attorney represent indigent
 19 civil litigants, such a request is only made upon an evaluation of the likelihood of the
 20 plaintiff’s success on the merits and a showing of “exceptional circumstances.” *See*
 21 *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004).
 22 A finding of the exceptional circumstances “requires at least an evaluation of the
 23 Plaintiff’s ability to articulate his claims ‘in light of the complexity of the legal issues
 24 involved.’” *Agyeman*, 390 F.3d at 1103 (quoting *Wilborn v. Escalderon*, 789 F.2d 1328,
 25 1331 (9th Cir. 1986)); *see also Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991).

26 **III. DISCUSSION**

27 Plaintiff has twice now requested appointment of counsel in this case based, in
 28 part, on his assertion that he is uneducated in the law and lacks the resources to properly

1 litigate his case. However, one's lack of education and resources, without more, does not
2 qualify as an exceptional circumstance warranting appointed counsel in a civil action.
3 The courts are aware, as Plaintiff wrote in his ex parte motion, that most *pro se* litigants
4 "find it difficult to articulate [their] claims," and would be better served with the
5 assistance of counsel. *Wilborn*, 789 F.2d at 1331; *Rand v. Rowland*, 113 F.3d 1520, 1525
6 (9th Cir. 1997). To address this issue, federal courts employ procedures which are
7 protective of a *pro se* litigant's rights. *See Haines v. Kerner*, 404 U.S. 519, 520 (holding
8 *pro se* complaint to less stringent standard) (per curiam). For example, where a plaintiff
9 appears *pro se* in a civil rights case, the court must construe the pleadings liberally and
10 afford the plaintiff any benefit of the doubt. *Karim-Panahi v. Los Angeles Police Dep't*,
11 839 F.2d 621, 623 (9th Cir. 1988).

12 The Court has once again reviewed the complaint in this action and finds Plaintiff
13 has been able to clearly articulate his claims that his Eighth and Fourteenth Amendment
14 rights were violated. Nothing has substantially changed in this case since the Court's last
15 order that would change the Court's analysis of the exceptional circumstance
16 requirement. Although Plaintiff argues that his case is "complex," the Court does not
17 agree that the issues are so complex as to warrant appointment of counsel at this time. As
18 the Ninth Circuit explained in *Wilborn*, difficulty alone is not sufficient to meet the
19 exceptional circumstances requirement. *Wilborn*, 789 F.2d at 1331.

20 To establish exceptional circumstances, Plaintiff must demonstrate that because of
21 the complexity of his legal claims he is unable to articulate his positions. *Rand*, 113 F.3d
22 at 1525. The court in *Rand* held exceptional circumstances did not exist where, even
23 though the motions that were filed with the court "did not achieve the quality of papers
24 that might have been prepared by a lawyer," the papers were "generally articulate and
25 organized." *Id.* Here, like the litigant in *Rand*, Plaintiff has been able to put forward his
26 claims in a generally articulate and organized manner against the relative complexity of a

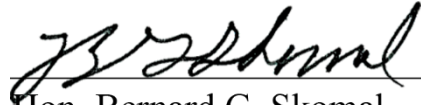
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1 §1983 case and therefore this action does not warrant the assistance of counsel at this
2 time.¹ Accordingly, Plaintiff's motion is **DENIED** without prejudice.

3 **IT IS SO ORDERED.**

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5 Dated: July 8, 2016

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7 Hon. Bernard G. Skomal
8 United States Magistrate Judge
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26 ¹ Plaintiff also states that he needs the assistance of counsel because of his "recent diagnosis." (ECF No.
27 45 at 1.) He further states that he has not enclosed his mental diagnosis "do (sic) to no copys (sic)." (Id.
28 at 2.) Not only has Plaintiff failed to provide corroboration of his mental diagnosis, the Court finds that
whatever the diagnosis is, Plaintiff is nevertheless able to sufficiently articulate his position with respect
to his factual and legal arguments. This likewise fails to meet the standard of exceptional circumstances
required to obtain counsel. *Agyeman*, 390 F.3d at 1103